

Incarceration

- A view through the bars can spoil the prettiest landscape – Wieslaw Brudzinski



Purposes of Incarceration

- Retribution
- Incapacitation
- Deterrence
- Rehabilitation

Retribution 1

- Person has infringed upon the rights of others so deserves to be punished.
 - “An eye for an eye, a tooth for a tooth”
 - “Just deserts”
 - Frontier justice – The “Martins and the Coys” and lynching of offenders

Retribution 2

- Rape clear cut via victim, family, community, etc. What of marijuana use, prostitution, cheating on income taxes, petty theft, and other non-violent crimes?
- State becomes the punisher and enforces retribution. Can also involve fines and financial penalties. Issue of set tariff for wrongs regardless of mitigating circumstances.

Retribution 3

- Goal of retribution – no effort to change the offender and provides nothing for society except revenge. How much revenge is due to the victim of crime versus what is due versus the cost to the general public?
- In recent years since the 1960's retribution as a justification for punishment has become more popular as states have abandoned social reform as a purpose of sentencing.

Corrections, Religion and Punitive Justice

- A 1976 Supreme Court case of *Gregg v. Georgia* played two roles in the movement toward a more punitive system of criminal justice.
- It opened the gates for states to impose the death penalty.
- It ruled that **public opinion** was a legitimate basis for formulating justice policy.
- States, through either direct legislation or the formation of sentencing commissions enacted penal policies based on “**just deserts**” and, in varying degrees, on a rejection of the rehabilitative model.

Corrections, Religion and Criminal Justice continued

- Penal changes were driven by the perceived need for “**harsher punishment**”.
- At both the state and federal level public opinion data suggested that sentences served were considerably and consistently more lenient than public estimates of what ought to be the normative societal response.
- Krisberg, President of the National Council on Crime and Delinquency, views the “reemergence of Puritanism as a major force in American political and social discourse.” “In this formulation, **evil is a virtually inevitable character flaw** in certain individuals” and “social and economic forces are assumed to have little impact on deviant behavior. Therefore “**punishment becomes the primary societal response to offenders, and religious conversion is the only acceptable rehabilitation program.**

Retribution 4

- International law: Persons come to prison as a punishment, not for punishment.
- Punishment with the loss of liberty and freedom of choice and separation from friends and family is the loss.
- Punishment is not another element to be meted out once a person is in prison through beatings, torture, deprivation of light, heat, food and water and medical care.

Collateral Punishment

- Increased tendency to continue punishment beyond jail or prison
 - Denial of voting rights for felons. Virginia is one of two states that make restoration of voting rights especially difficult.
 - Registration of offenders and listings that can hinder employment and obtaining licenses.
 - Set tariff for wrongs regardless of extenuating circumstances.
 - Denial of access to federal programs including home loans to felons.

Incapacitation 1

- Society can remove an offender's capacity to commit further crimes by detention in prison or execution
- “Lock then up and throw away the key”, banishment, join the army in WW I or II, or “three strikes you are out” in California.
- Focus is on characteristics of the offender

Incapacitation 2

- Research suggests that relatively few offenders are responsible for a large number of violent and property crimes.
- Therefore we should lock up these “career criminals” but it is difficult to predict who are the potential repeat offenders, so therefore we **should lock up all persons for more time**. This policy has an impact on correctional facilities and increases the likelihood offenders will opt for expensive time-consuming trials. They are less likely to cop a plea.

Incapacitation 3

- Difficult to predict probability of repeating crimes in determining sentence or decision to release the offender.
- How to determine the length of sentence?
- Presumably the offender would be released once authorities are “reasonably” sure that they will no longer repeat crimes.

Incapacitation 4

- What happens when offender gets out?
Nearly 100 percent of offenders are released at some point.
- Incapacitation sentences may be seen as violation of due process by punishing offenders for *predicted* future acts as opposed to actual crimes.

Incapacitation 5

- Current issues include the deviants or undesirables of society. **Mentally ill** and/or chronic consumers of **alcohol or drugs** on the street.
- Without strong guidelines, **racial and ethnic minorities**, unemployed young males hanging around on street corners dealing drugs, and other groups may be singled out for extra emphasis as opposed to urban whites.
- Tempting to sweep the streets clear to temporarily and presumably reduce crime. Social removal as a bases for incarceration.

Incapacitation 6

- Longer sentences for chronic criminals should theoretically reduce crime. We therefore **should be able to incarcerate** our way out of crime. Politically this sells well but unfortunately there is little or no research that clearly validates this hypothesis.
- A by product is a major increase in families without male role models and one can argue that the policies of recent years may actually generating new criminals for the future.

Deterrence 1

- Deterrence aims to prevent crime through the **example** of offenders being punished.
- *General* deterrence is directed at preventing crime among the general population.
- *Special* deterrence is aimed at preventing future crimes by a particular offender.

Deterrence 2

- Politically popular “tough on crime” promises of the likelihood and severity of punishment for various acts presumably send a message to a would be criminal.
- A problem is that we cannot measure how many crimes are not committed. We can only measure the offenses.

Deterrence 3

- To date there is virtually no reliable evidence to suggest that criminal sanctions can deter crime. Only those offenders who are not deterred come to the attention of the criminal justice system. These offenders all too often act out of anger and passion as opposed to rational thought.
- Deterrence assumes people act rationally and think before they act. Crimes involving human relationships, drugs, alcohol, psychological problems, mental illness and impulsive acts of vandalism are predominately tied to anger, depression and strong emotions.

Rehabilitation 1

- Popular model in the 1940's to 1970's but has changed since then. Assumes crime is really caused by identifiable, curable problems such as poverty, lack of job skills, low self-esteem and hostility towards authority.
- Goal is to **restore** a convicted offender to a constructive place in society through some form of vocational or educational training or therapy.

Rehabilitation 2

- Criminal behavior is assumed to result from some social, psychological, or biological imperfection. Treatment of the disorder becomes the primary goal of corrections.
- Focus is on the offender. Persons are treated, not punished and are returned to society when “cured”.

Rehabilitation 3

- Practically have periods of dissatisfaction with the philosophical basis and practical results of rehabilitation.
- “the sanctioning authority is entitled to choose a response that expresses moral disapproval, mainly punishment.
- No matter what the program, some inmates completing programs and/or being released early through parole or probation will commit crimes in the future. Public clamor and protest often results.

Rehabilitation 4

- Judges should not set fixed sentences but rather maximum and minimum terms so that the parole board can release inmates when they have been rehabilitated
- Based on opinion polls of public program administrators and prison wardens there is a lot of public support for rehabilitation but politicians have trouble fending off complaints if ex-offenders commit new crimes

Rehabilitation 5

- Many legislatures, prosecutors, and judges have abandoned the goal in favor of retribution, deterrence and incapacitation.
- Politicians cannot stand the heat for cases that fail due to the media frenzy. “Willie Horton” etc. Sort of the “one percent solution”.

Parents Incarcerated and Their Minor Children

- BJS The nations prisons (excludes jails) held approximately 744,200 fathers and 65,600 mothers at mid-year 2007.
- Parents held in the nations prisons—52 percent of state inmates and 63 percent of federal inmates—reported having an estimated 1,706,600 children, 2.3 percent of the U.S. resident population under age 18.
- Extending the data to include parents in jail (conservative 50 percent of the number held in prisons) and projecting to mid-year 2008 (conservative 2 percent increase over mid-year 2007) the total estimate for mid-year 2008 would be 2.6 million children with one or both parents that are incarcerated.
- This is slightly greater then the combined population of Wyoming, The District of Columbia (as a city), Alaska and Delaware.

Incarceration – Current situation

- The move toward uniformity in sentencing is the result of the widespread adoption of retribution and incapacitation as guiding philosophies in most jurisdictions
- Less judgment and evaluation of inmates is necessary with “one size fits all” punishments. Everyone is treated equally badly.

Incarceration

- Nationally direct expenditures on corrections exceeded \$68 billion for all levels of government in 2006, \$98 billion for police and \$46 billion for judicial functions.
- As a share of total state general fund spending, corrections has grown from 5.2 percent in 1988 to 6.9 percent in 2006.
- Virginia spent \$1.136 billion in fiscal year 2007 on corrections. For every dollar spent on higher education, Virginia spent 60 cents on corrections. New York spent 83 cents.

Incarceration

- By 1990 every state and the federal government had enacted some of the following:
 - Mandatory sentences with reduction in judicial discretion.
 - Truth-in-sentencing policies that rewarded states with federal funds (to build more prisons) if convicts are required to serve more of their sentences.
 - The suspension of parole programs
 - Mandatory life sentences without parole if convicted three times for certain felonies.

Incarceration

- Nearly everyone who goes in comes out. Each year more than 700,000 prisoners are released from federal and state prisons and 9 million people go in and out of U.S. jails.
- Recent years have seen a flood of prisoners whose prior experiences and prison terms have left them so ill-equipped to reenter their communities and find work that two-thirds of them are arrested for a new crime within three years, and more than one-half are back behind bars.

Incarceration and recidivism

- Longer sentences without rehabilitation or reentry programs leads to high rates of recidivism. Longer sentences and high rates of recidivism leads to three predictions.
 - The increase in incarceration would outstrip the criminal justice system's capacity, producing severe overcrowding in in prisons and jails.
 - Corrections budgets would have to swell commensurately.
 - The families and communities to which prisoners return will suffer further disruption and damage.
- These predictions have become facts.

Recidivism

- Research and data on recidivism is sparse.
- A 1994 BJS report indicated that over two-thirds of State prisoners released in 1994 were rearrested within three years either because of a new crime or because of a technical violation of their parole.
- Overall 1994 reconviction rates were relatively stable compared with a 1983 study. For violent offenders the reconviction rates were at 40-41%, property offenders at 53% and public-order offenders at 42%.
- The rate increased significantly for drug offenders going from 35% in 1983 to 47% in 1994.

Recidivism

- A British report by BBC in 2005 indicated the recidivism rate for released prisoners for the United States is 60% compared to 50% for the United Kingdom (UK). The lower rate for the UK was attributed to a **focus on rehabilitation and education of prisoners** compared to the U.S. focus on punishment, deterrence and incapacitation.
- Some UK observers now view the treatment of recidivism as a mental health issue rather than a “crime” issue.

Recidivism

- An Open Society Institute 1997 study indicated that inmates who received some post-secondary education had recidivism rates 40 percent lower than those that received no post secondary education. The overall recidivism rate of 67 percent rate for State prisoners was lowered to 15 percent with earning an A.A. degree, 13 percent with a Bachelor's degree and 1 percent with earning a Master's degree.
- Nearly all funding for college level training for inmates was removed by the 1994 Violent Crime Control and Law Enforcement Act and has never been restored.

Incarceration side effects

- State corrections budgets have swelled.
- Most states have had to divert funds from education, welfare and other social services to prisons.
- Many states are terminating in-prison drug treatment, education, and other programs, making it more likely that released prisoners will buckle in the outside world, re-offend, and be incarcerated in short order. In a sense a policy to increase public safety may unintentionally decrease it.

Incarceration and Crime

- “Increasing incarceration while ignoring more effective approaches will impose a heavy burden upon courts, corrections and communities, while providing a marginal impact on crime”.

Incarceration and Crime: A Complex Relationship. The Sentencing Project, 2005

- The Sentencing Project is a national nonprofit organization that works for a fair and effective criminal justice system.

Incarceration and Crime

- Has the unprecedented 36 year rise in the use of incarceration had an impact on the rate of crime in the United States?

Sentencing Project Report

- From 1920 to 1970 the rate of growth in the population and the growth in the use of incarceration was commensurate. There was a slightly higher rate of growth in incarceration.
- From 1970 to mid-2008 the U.S. population growth was 100 million persons or 49 percent. During the same period we can estimate that the U.S. jail and prison population grew from less than 330,000 to 2.4 million or over 625 percent.

Sentencing Project Report

- There was a significant 48 percent increase in the crime rate between 1970 and 1991. There has been a significant 53 percent record decrease in the crime rate between 1991 and 2008.
- Advocates of increased use of incarceration contend the policies of the past have been the primary factor responsible for the reduction in the crime rate. The two-pronged approach of tougher sentences and restrictive release patterns have led to the crime drop.

Sentencing Project 2

- The tougher sentencing rules have been most evident in the federal system where mandatory minimums, sentencing guidelines, and the abolition of parole have combined to create an extremely punitive system.
- The Dept. of Justice has argued that “tough sentencing means less crime” by ensuring that violent offenders are off the streets and that the guidelines impose just punishment and deter others from committing crimes.

Sentencing Project 3

- Despite the Dept. of Justice claims, such a direct link between increased incarceration and lowering crime rates is far from an accepted fact. The Sentencing Project Report looked at distinguishing between state and national trends, differing measures of crime and victimization and assessing various time frames for analysis. Other factors included general economic trends, employment rates, age, demographics, rates of drug abuse and geographic variation.

Sentencing Project 4

- Analysis Complications: Neither the Uniform Crime Reports of serious violent crimes (determines crime rate) or the National Crime Victimization Survey of sample households incorporate any assessment of drug offenses, since personal drug use or drug sales, apart from those resulting in arrests, are not reported to the police as victimizations.
- This absence of data greatly obscures the overall number of people engaged in illegal activity and skews the national perception of actual trends in criminal activity.

Sentencing Project Report

- Without going into all the aspects of the study and the methodology, the report concludes: **AN OVERVIEW OF CHANGE IN INCARCERATION AND CRIME IN ALL 50 STATES REVEALS NO CONSISTENT RELATIONSHIP BETWEEN THE RATE AT WHICH INCARCERATION INCREASED AND THE RATE AT WHICH CRIME DECREASED.**

Sentencing Project Report

- While the nation celebrates a reported crime rate at a 40 year low it is instructive to note that despite the addition of more than 1.3 million persons to the prison population (excluding jail inmates), crime rates are at the level (likely below) that they were at a time (1970) when the number of prisoners was just a fraction of the total today.

Incarceration and Crime: Other Reports

- A 2000 Sentencing Project report concluded that between 1991 and 1998 that there was no discernable pattern of states with higher increases in rates of incarceration experiencing more significant declines in crime.
- Updating the study to include 1998 to 2003: Since 1998, 12 states experienced stable or declining incarceration rates, yet the 12% average decrease in crime rates in these states was the same as in the 38 states in which rates of imprisonment increased.

Incarceration and Crime: Other Reports

- In a 2004 report economist Steven Levitt identified the growth in incarceration as one of four primary factors leading to a decline in crime in the 1990's. He argued that each additional person incarcerated results in the prevention of 15 crimes.
- However his model predicts the majority of crimes prevented by incarceration of additional persons is comprised of “less socially costly property crimes”. He concludes this approach is not necessarily the most efficient allocation of resources since the social benefit of radically expanding the prison population was likely to be well below his estimates.
- He estimates 80% of the crime that would be prevented for each additional prisoner would be for non-violent offenses.
- In effect Levitt concludes there are diminishing marginal returns from increasing the incarceration rate. The marginal benefit of incarcerating an additional person declines with each additional arrest.

Incarceration and Crime: Other Reports

- Levitt, in a more recent article, noted that it seems quite plausible that substantial indirect costs are associated with the current scale of imprisonment including impact on the African American community, and that further increases in imprisonment may be less attractive than the naïve cost benefit would suggest.
- Other factors accounting for the drop in crime rates in the 1990's include a growing economy, changes in drug markets (topping out), strategic policing and community response to crime.

Corrections: Effective Public Policy?

- What is the purpose of our current public policy with regard to criminal offenders?
- For those that are being incarcerated it appears that rehabilitation has been abandoned and will not survive political scrutiny. Research indicates that massive incarceration of additional offenders does not appear to have deterred or reduced crime and that incapacitation, with the exception of a few of the very worst offenders, also does not have an impact of crime.
- Therefore **retribution or revenge appears to be the primary goal of current policy.** Is it effective public policy?

Crime and Incarceration: International Comparisons

- Mauer states U.S. rates of victimization are in the mid-range of the nations surveyed. Residents in New York City, for example, are less likely to be victims of burglary or theft than persons in London.
- One less formal source but well done: For the crime of assault, 2.2 percent of Americans are victimized each year, compared to 2.3 percent for Canadians and 2.8 percent for Australians.

Crime and Incarceration: International Comparisons

- For violent crimes Americans are considerably less safe than citizens of other countries. For example homicide rates in the U.S. are about four times that of most nations in western Europe.
- Mauer concludes that despite the fact that the U.S. has a higher rate of violent crime than other industrialized nations, much of the **unprecedented prison increase** of recent years is explained not by crime rates but by **changes in sentencing and drug policy**.

International Criminal Justice

- Research by Marc Mauer. Comparative International Rates of Incarceration: An Examination of Causes and Trends. The Sentencing Project. June 2003
- ...the U.S now locks up its citizens at a rate 5-8 times that of the industrialized world to which we are most similar, Canada and western Europe. My note still true in 2008.

Crime and Incarceration: International Comparisons

- Germany decreased use of short prison sentences. The legislature embraced the idea that short-term imprisonment does more harm than good, it disrupts the offenders ties with the family, job, and friends, introduces the offender into prison subculture, and stigmatizes the offender for the rest of his or her life.
- In California a man convicted of stealing \$153 worth of videotapes from a department store received a sentence of 50 years to life. It is estimated California taxpayers will spend at least \$1 million over the next 50 years to lock up this videotape thief. Such policies may be found constitutional, but they do not necessarily represent effective crime policy.

U.S. Justice Versus Europe 1

- France – average time served 8 months in 1999. U.S. 53 months for state prisons in 1996 and 28 months all offenses; federal 91 and 67 months. (note sentences are likely even longer now in U.S.). German law: Sentences of less than 6 months result in fines and no prison time

Crime and Incarceration: International Comparisons

- U.S. sentencing practices appear to be much harsher for many offenses.
- Burglars in the U.S serve an average of 16.2 months in prison compared to 5.3 months in Canada and 6.8 months in England/Wales.
- In the 70's Finnish officials instituted reforms to increase the use of suspended sentences and earlier eligibility for parole release. Incarceration declined 40 percent in 15 years.

Crime and Incarceration: International Comparisons

- Stern observes that “Among mainstream politicians and commentators in Western Europe, it is a truism that the criminal justice system of the U.S. is an inexplicable deformity.

U.S. Law Versus Europe 2

- European law: Many acts are prohibited but not necessarily inherently evil. State power has made for mildness in continental Europe.
- U.S. punishments are a function of mass politics and often volatile and vicious currents of democratic process. – “soft on crime” electioneering, judgeship elections result in positive or negative “political publicity” which is not the case in western European countries.

U.S. Justice versus Europe 3

- U.S. cultural roots. Suspicious of central government authority. Egalitarian social status—dislike of social hierarchy. Procedural fairness but less respect for person. Christian/religious tradition. American racism. Violence – rate of crime, violence in prisons and policing. Degradation in punishment.

U. S. Justice versus Europe 4

- European model. Offenders must not be degraded but accorded respect and dignity. Prison is a rare sanction. Sentences dramatically shorter but some sense of proportionality—sentence though indeterminate cannot be disproportionate to the gravity of the offense. Prison uniforms largely abolished. Rules on inmate privacy, elimination of barred doors. Principle of approximation or normalcy, prison life should approach outside. German convicts work at “real jobs”, No loss of civil rights—right to vote in contrast to the United States.

U.S. Justice versus Europe 5

- Humiliation and degradation is a prime feature of American criminal justice.
 - Formal equality – treat all exactly alike – no special mercy
 - Hit every offender equally hard
 - American law-tendency to define all offenses as inherently evil and consequently to punish harshly
 - Procedural protections

U.S. Justice versus Europe 6

- Use of “fear card” tool is easy pickings and very effective tool if media chooses not to try and discover validity of charges (Willie Horton case). Once elected, politicians are obligated to “get tough on crime” which tends to be a code word for racism.
- Intoxication that comes with treating people as inferior. Penal laws often lead to degradation.
- Federal drug laws have led to incarceration of thousands of nonviolent prisoners.
- Status abuse is commonly a symptom of a changing and troubled society.
- U.S. loss of political rights with ex-offender status is common.

U.S. Justice versus Europe 7

- Fewer criminal zones in Europe. Violent offenders, terrorists, certain sex offenders and drug dealers.
 - Very limited use of prison on property offenses.
 - Increased use of fines, probation, and community service.
 - Use of “day fine” system tailored to ability to pay and to degree of integration into society.
 - Drug users do not find themselves in prison.
 - Prostitution legalized in Northern Europe, procuring is not.
 - Deviancy has been defined down.
 - Special class of judges. Presupposes inmates will be released early, provide treatment toward re-socialization.
 - Continental courts have grown stronger.

U.S. Justice versus Europe 8

- U.S. one-half of state prisoners are property offenders.
- U.S. lower courts have grown weaker.
- American drive toward “zero tolerance” too closely akin to fascists—especially the Nazi’s. Too close and disturbing not to be discussed.
 - U.S. does not have programmatic racism or sterilization but does have some similar declarations. Permanent elimination of habitual offenders—receiving public shaming sanctions—mobilizing mass support for something nasty enough to make “them” hurt.
 - U.S. horizontal society has resulted in a criminal justice system long on degradation and short on mercy—foolish to think any major changes are coming soon.

U.S. Justice Versus Europe 9

- Mildness and use of pardons are little used in the U.S. Victims rights movement have been a political force. Politics of reform in Europe is profoundly different then in the U.S.
- European prison guards are civil servants and receive several months training. Professional norms of respect.
- Dignity of prisoners pursued in Europe with an intensity unlike anything found in the U.S. "Inmates are just like anybody else".
- Resistance to public exposure

U.S. Justice Versus Europe¹⁰

- Granting of amnesties with shorter sentences a regular practice in European justice. Systematic mercy is something that is almost wholly lacking in U.S. Bastille day in France, Christmas in every state are common days for granting pardons.
- Dignity and honor matter in Europe throughout the law.
- Criminal justice policy making in Europe almost entirely devoid of expert scrutiny from government specialists or from scholars. European tepid bureaucratic routinization of criminal law is an important barrier to overheated democratic retributivism that has come to America.

Invisible Punishment in the U.S. 1

➤ Varies by state.

- Loss of political rights - right to vote. U.S. indirectly imposes major burden on families including economic hardship, social risk for children, health and disease risks.
- Incarceration in remote rural areas to promote local economy imposes major burden on family relationships. Travel can be a major burden – reliable car, motel cost, child care, family members searched, crowded waiting rooms and visiting via Plexiglas window by phone.

Invisible Punishment in the U.S. 2

- Telephone contact for prisoners limited, bastion of price gouging – call collect, sweet heart profit deals. Calls at .35 cents to 4.00 per minute.
- Offenders may be ineligible for health and welfare benefits, food stamps, public housing, federal educational assistance, drivers license may be suspended, no longer qualify for certain employment and professional licenses, job training programs, cannot enlist in the military, possess firearm, and obtain federal security clearance.

Invisible Punishment in the United States 3

- In some communities over **one-third to one-half** of all young men will eventually be incarcerated. This rate of incarceration will destroy the entire social fabric of a community. Dating relationships are altered (a long term stable relationship for a woman becomes unreal). The economics of extended families are perverted—older women usually get the kids, and have to support them, as well as bear the considerable costs of maintaining a relationship between the children and their incarcerated parent.